Fed. 785, 792; *Cornelius* v. *Kessel,* 128 *U. S.* 546; *Love* v. *Flahive,* 205 U. S. 195.

The principal case, holding along these lines says, "the settled rules and practice and the uniform decisions of the department constitute both rules of law and of property, and equitable titles in entrymen cannot be destroyed by the Land Department in violation of them," but it makes an advance over the old principle in that it would seem to imply that the old rule of construction must control in the courts, irrespective of whether or not there is an attempt to make the new rule retroactive.

No principle is more firmly established in American jurisprudence than that, after the title has passed from the United States to a private party, it is the province of the courts to correct the errors of the officers of the Land Department which have resulted from fraud, mistake or erroneous views of the law, to declare the legal title to lands involved to be held in trust for those who have the better right to them. The power of the Secretary should not be an arbitrary, unlimited or discretionary one, but should be exercised according to law and not in disregard of it. The advances brought out in the principal case are clearly justified and if followed will most certainly tend to a better administration of justice in regard to titles to land in the United States. N. K. F.

RIGHT OF ONE PARTNER TO SUE HIS CO-PARTNER IN CONVERSION.—Although the settlement of the affairs of a partnership is generally left to a court of equity, there are certain well defined exceptions to the rule. By the better opinion a partner may sue at law in contract when a final balance has been struck and the suit will result in the final determination of the rights of the partners. But the rule in tort is much more uncertain. Whether or not a partner may sell all the property of the firm without liability to his copartner for conversion has been an open question. The recent case of *Weiss* v. *Weiss* decided in the New York Supreme Court and reported in 133 N. Y. Supp. 1021 decides that an action at law will lie in such case. The facts of the case were that the plaintiff and the defendant were copartners, owning property as such. Defendant Weiss transferred to another all the property of the partnership without the knowledge, consent or authority of the plaintiff. On demurrer it was held (HOTCHKISS, J., dissenting) that the complaint stated a good cause of action for conversion.

It does not appear from the report of the case whether the partnership was a trading or non-trading firm. If the former, the decision is open to criticism. In *Fox* v. *Hanbury,* 2 Cowp. 455, LORD MANSFIELD held that each partner has a power singly to dispose of the whole of the partnership effects. This may be done even if it terminates the partnership. "The right of each partner to sell, assign or transfer any part or the whole of the partnership property, in the way of the regular business of the partnership, is absolute and unquestioned; this however must be done in the regular course of business of the firm, for outside of this he has no power." PARSONS, PARTNERSHIP, Ed. 3, 163. The following cases support the rule laid down in *Fox* v. *Han-*

bury, supra: *Lamb* v. *Durant,* 12 Mass. 54, 7 Am. Dec. 311; *Tapley* v. *Butterfield,* 1 Metc. 515, 35 Am. Dec. 374; *Arnold* v *Brown,* 24 Pick. 89, 35 Am. Dec. 296; *Graser* v. *Stellwagen,* 25 N. Y., 315; *Mabbett* v. *White,* 12 N. Y. 422; *Woodward* v. *Cowing,* 41 Me. 9, 66 Am. Dec. 211; *Ellis* v. *Allen,* 80 Ala. 515, 2 South 676. Other cases limit and extend the rule in various ways. Such power to assign exists if the transaction is *bona fide, Deckard* v. *Case,* 5 Watts 22, 30 Am. Dec. 287; one partner, in absence of dissent by his copartner, may out of firm assets discharge firm liabilities, *Hanchett* v. *Gardner,* 138 Ill. 571, 28 N.E. 788; a sale to pay firm debt is valid, *Schneider* v. *Sansom,* 62 Tex. 201; a sale of the firm property to pay one partner's private debt is valid, where purchaser was unaware of ownership by the firm, *Locke* v. *Lewis,* 124 Mass. 1, 26 Am. Rep. 631; but where purchaser knowingly receives firm assets, he holds in trust for firm creditors, *Johnson* v. *Hersey,* 70 Me. 74, 25 Am. Rep 303.

The rule in the case of non-trading partnerships would appear to be different. One partner has no authority to sell when the object of the firm is not trade, buying and selling, but a business to which the continued ownership of the property sold is indispensable. *Sloan* v. *Moore,* 37 Pa. St. 217; *Cayton* v. *Hardy,* 27 Mo. 536; *Blaker* v. *Sands,* 29 Kan. 551; *Lowman* v. *Sheets,* 124 Ind. 416, 24 N. E. 351, 7 L. R. A. 784. "The tendency of the modern cases, however, is to limit the implied power of sale to the property which is held for the purpose of sale, and not to include the property kept for the purpose of carrying on the business." GILMORE, PARTNERSHIP, 289. In the principal case it neither appears that the firm was a non-trading firm nor that the goods sold were not kept for sale in the regular course of the business.

Conceding that there existed no right in the partner to sell the property, it by no means follows that his co-partner may sue him in conversion. The court base their decision on the supposed similarity between the respective rights of tenants in common and of partners. After an exhaustive review of the English authorities, the conclusion is reached that if one tenant in common or joint tenant destroys, *Barnardistone* v. *Chapman,* Bull. N. P. 34, or sells, *Mayhew* v. *Herrick,* 7 C. B. 229; *Barton* v. *Williams,* 5 B. & A. 395, the common property, he may be sued at law by his cotenant. The cases seem to be in conflict as to whether it was necessary that the sale should be in market overt. However it seems settled in New York that the sale of the whole chattel by one tenant in common entitles his cotenant to an action in trover. *White* v. *Osborn,* 21 Wend. 72; *Osborn* v. *Schenck,* 83 N. Y. 201. This would also appear to be the rule in other jurisdictions. *Delaney* v. *Root,* 99 Mass. 546, 97 Am. Dec. 52; *Wheeler* v. *Wheeler,* 33 Me. 347. After arriving at this conclusion, SEABURY, J., in delivering the opinion of the court in the principal case, says: "I cannot see any reason for applying a different rule to partners from that which is applicable to tenants in common or joint tenants. There are of course important differences between the rights and duties of such co-owners and partners, but no such distinction exists so far as the right to maintain trover is concerned." Not a single precedent is cited for allowing the action of conversion to lie against one partner at the

suit of his copartner, and it is submitted that the differences in their respective rights do not warrant the extension to cases of partners, of the rule of tenants in common and joint tenants. In the case of joint tenants and tenants in common there is no implied power in either or any of them to dispose of the whole chattel, while in the case of partnership, each partner is a general agent for the firm, and as shown above, he may sell the entire property of the firm, or at least such of the goods of the firm as are kept for the purpose of sale. If the sale was within the rights of the copartner, of course no action would lie, and in the cases that have been examined, no instance has been found where an action in conversion was allowed against the partner even where the sale was held to be wrongful.

The cases divide themselves into two general classes: (1) equitable actions against the copartner, or his vendees, or both, to have the sale set aside; *Wilcox* v. *Jackson*, 7 Colo. 521, 4 Pac. 966; *Hunter* v. *Waynick*, 67 Iowa 555: (2) action at law against his vendees; *Cayton* v. *Hardy*, 27 Mo. 536; *Doll* v. *Hennessy Mercantile Co.*, 33 Mont. 80. In the last case it is said in the argument of counsel that one partner cannot sue the other in replevin or trover, citing as authority POMEROY, REMEDIES and REMEDIAL RIGHTS (Ed. 2), pp. 266-8, 270. The following cases by analogy seem to deny the right to maintain conversion. Unless some of the goods have been destroyed, trespass will not lie for a sale by one partner, at the suit of his copartner, *Montjoys* v. *Holden*, Litt. Sel. Cas. 447, 12 Am. Dec. 331; a partner taking goods of the firm by force and delivering them to a third person is not liable therefor to his copartner, *Dana* v. *Gill*, 5 J.J. Marsh. 242, 20 Am. Dec. 255. But where a partner commits a distinct tort against his copartner in no way connected with the partnership business, he is liable in an action at law as any one else would be. *Pierce* v. *Thompson*, 6 Pick. 193; *Gilliam* v. *Loeb*, 131 Mo. App. 70, 109 S. W. 835. The clear result of all the authorities is that conversion will not lie against a partner for the mere unauthorized sale of the personal property of the firm if none of the goods were destroyed. 30 CYC. 468. To the extent that the court in the principal case departed from this rule, it would seem that the decision is wrong. H. R. C.

DOES A TAX DEED, VOID ON ITS FACE, GIVE COLOR OF TITLE?—This question is suggested by *Kit Carson Land Co.* v. *Rosenberry*, (Colo. 1912) 122 Pac. 72. In a brief decision the court answers this question in the negative and, consequently, decides that the defendant cannot predicate his claim to title by adverse possession upon such a tax deed. Upon the question presented there is a sharp division of authority, based more upon an arbitrary pronouncement of public policy, than upon any refinement of reasoning. Many learned courts have vainly attempted to reconcile the decisions, so the brevity of the decision now under discussion would probably not call for comment were it not for the fact that, without citation or discussion of authority, it overthrows what seems to have been the settled law in Colorado. *De Foresta* v. *Gast*, 20 Colo. 307, 38 Pac. 244; *Bennet* v. *North Colorado Springs Land & Improvement Co.* 23 Colo. 470, 48 Pac. 812, 58 Am. St. Rep. 281.